



Phone: 541-682-5377
www.eugene-or.gov/hearingsofficial

Meeting Location:
Atrium Building – Sloat Room
99 West 10th Avenue

The Eugene Hearings Official welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice. To arrange for these services, contact the Planning Division at (541)682-5481.

WEDNESDAY, March 13, 2013
(3:00 p.m.)

I. PUBLIC HEARING ON APPEAL OF PLANNING DIRECTOR'S DECISION

Pacific Recycling (CI 12-2)

Assessors Map: 17-04-26-00

Tax Lot: 2000

Decision: Code interpretation of Eugene Code Sections 9.0040, 9.0500, 9.2450

Appellant: Bill Kloos, Law Office of Bill Kloos

Lead City Staff: Katharine Kappa, Land Use Analyst

Telephone: (541) 682-5309

E-mail: katharine.h.kappa@ci.eugene.or.us

II. PUBLIC HEARING ON APPEAL OF PLANNING DIRECTOR'S DECISION

Schnitzer Steel (CI 13-1)

Decision: Code interpretation of Eugene Code Section 9.2450

Appellant: Bill Kloos, Law Office of Bill Kloos

Lead City Staff: Katharine Kappa, Land Use Analyst

Telephone: (541) 682-5309

E-mail: katharine.h.kappa@ci.eugene.or.us

Public Hearing Format:

1. Staff introduction/presentation
2. Public testimony from applicant and others in support of application.
3. Comments or questions from interested persons who neither are proponents nor opponents of the proposal.
4. Public testimony from those in opposition to application.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at www.eugene-or.us/hearingsofficial.

M E M O R A N D U M

March 13, 2013

To: Ross Williamson, Hearings Official

From: Katharine Kappa, Land Use Supervisor (Building & Permit Services Division)

Subject: Appeal of Code Interpretation for Pacific Recycling (CI 12-2)

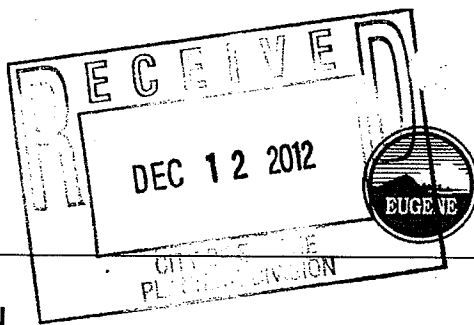
On December 12, 2012, Bill Kloos, on behalf of Schnitzer Steel, submitted a code interpretation regarding a property located 3300 Cross Street (also known as Assessor's Map 17-04-26-00, Tax Lot 2000). The property is zoned I-3 Heavy Industrial Zone and is developed with a metal recycling business known as Pacific Recycling. According to the applicant, the interpretation request was prompted by the Zone Verification letter issued on December 7, 2012 by the Planning Director for Pacific Recycling. In his code interpretation submittal, the applicant requested that the Planning Director determine that a metal shredding use was not allowed in the I-3 zone and that a Type II Traffic Impact Analysis Review may be required for a recycling facility that includes a metal shredder. On December 21, 2012, the Planning Director issued a decision on this code interpretation request.

On January 2, 2013, Bill Kloos, on behalf of Schnitzer Steel, filed an appeal of this decision. In accordance with Eugene Code Section 9.0040(1), an appeal of a code interpretation decision shall be heard by a hearings official in the manner set out in Eugene Code 9.7600 – 9.7635. As such, the City has scheduled a public evidentiary hearing to consider the matter before the Eugene Hearings Official.

ATTACHMENTS:

1. Applicant's Original Application for Code Interpretation
2. Planning Director Decision on Code Interpretation (dated 12/21/12)
3. Appeal Statement from Bill Kloos on behalf of Schnitzer Steel
4. Testimony from Miller Nash Attorneys on behalf of Pacific Recycling (received by City 3/6/13)

For more information, please contact Katharine Kappa, Land Use Supervisor at 99 West 10th Avenue, Eugene, Oregon, (541)-682-5309 or email Katharine Kappa at: Katharine.h.kappa@ci.eugene.or.us



**Planning & Development
Planning**

City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401
(541) 682-5377
(541) 682-5572 Fax
www.eugene-or.go

**LAND USE CODE AND DECISION
INTERPRETATION REQUEST**

Please complete the following form and provide the required information. If you have questions about filling out this application, please contact staff at the Permit and Information Center, 99 West 10th Avenue, Eugene, OR 97401, phone (541) 682-5377.

Code Section(s) to be Interpreted (List specific code section(s) where an interpretation is being requested.):

EC 9.0040, 9.0500, 9.2450, 9.8650

Does this interpretation request pertain to a specific land use application or building permit:

☐ Yes ☒ No

If so provide application or permit number (s): _____

Filing Fee

☒ A filing fee must accompany all applications. The fee varies depending on the type of application and is adjusted periodically by the City Manager. Check with the Planning staff at the Permit and Information Center to determine the required fee or check the City web site at: www.eugeneplanning.org

Written Statement

☒ Provide 3 paper copies and one CD copy of all application materials (i.e. written statement, site plans, etc.) in pdf format at the time of initial submittal. Please note that it is the applicant's responsibility to make sure that the CD and paper copies are identical. Following completeness review, an updated CD and additional paper copies may be required. All site plans must be folded to a size equal or less than 11" x 17".

Contact Information

Name (print): BILL KLOOS

Company/Organization: LAW OFFICE BILL KLOOS PC

Address: 375 W. 4TH AVE #204

City/State/Zip: EUGENE OR 97401 E-mail (if applicable):

BILLKLOOS@LAWOFFICEBILLKLOOS.COM

Phone: 541-343-8596

Fax: _____

Signature: [Signature]

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM
TEL: 541.343.8596

December 11, 2012

Carolyn Burke, Planning Director
Eugene Planning and Development
Atrium Building
99 West 10th Ave.
Eugene, OR 97401

Re: Request for Director Interpretation under EC 9.0040 relating to:
EC 9.0500; EC 9.2450; EC 9.8650
3300 Cross Street, Pacific Recycling Inc.

Dear Ms. Burke:

Please accept this letter, the enclosed form, and enclosed filing fee as a request for a Director Interpretation of the Eugene Code ("EC") filed on behalf of Schnitzer Steel Industries Inc. ("SSI"). SSI seeks confirmation from the Director of a code interpretation on the following issues, as they relate to the current development proposal for the property above:

1. A metal shredding use, as proposed for the property above, is a primary use that is not permitted in Eugene's I-3 Heavy Industry zone; and
2. A Type II Traffic Impact Analysis Review may be required for a recycling facility that includes a metal shredder and relies on roadways.

This interpretation request is prompted by the Zoning Verification letter issued on December 7 by Katharine Kappa on your behalf, and applied for by the property owner at the request of the Oregon Business Development Department. The Zoning Verification application described the proposed use in a single sentence: "Metal recycling and processing specifically the installation of a shredder." See attached verification letter, application, and supporting materials.

The verification letter concludes, in summary terms, that metal shredding equipment is allowed as part of the use listed in the I-3 zone. The implication is that a shredder is part of or accessory to the listed use: "Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)." This reflects a legal error. The verification letter has been separately appealed to LUBA. With this application my client wants to get the City on the path to a correct interpretation of the code as it relates to the proposed use on this site. We believe a better understanding about what a metal shredder is would be most helpful to the City's decision.

Requested Interpretation #1: A metals shredder is not a permitted use in the I-3 Heavy Industrial zone.

The I-3 zone lists five distinct types of recycling facilities that are allowed in the zone. Each of these five uses is defined in the code at EC 9.0500. Four of the “recycling” uses that are listed and defined do not come close to the proposed use. That leaves the fifth use listed in the I-3 zone: “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage).”

The definition in the code at EC 9.0500 that captures this use is:

Wrecking Yard, Motor Vehicles and Building Materials. A premise used for the storage and dismantling of used motor vehicles, manufactured dwellings, recreational vehicles, machinery and/or building materials, or parts thereof. May also include sale of parts or materials.

This use encompasses vehicle wrecking and salvage, which is colloquially referred to as a “pick and pull” facility, where end-of-life vehicles are stored so that retail or wholesale customers can retrieve used auto parts. There are a number of these facilities in the Eugene/Springfield area. Cars and other vehicles are dismantled. The dismantling process first typically includes detitling, general degarbing, and formal processes for removal, recovery and recycling of the various fluids and hazardous materials, such as mercury switches, gasoline, freon, power steering fluid and brake fluid. Then, re-usable auto parts are recovered for sale. Once a vehicle has no further salvageable parts value, the residual vehicle hulk is flattened with either a portable or a stationary car crusher to facilitate transport to a different location – a metal shredder, to manufacture steel shred and recoverable non-ferrous metals.

Wrecking yard uses, which focus on salvaging useable parts from end-of-life vehicles before they are further processed, do not include a metal shredding use. Metal shredding is a distinct, large-scale, capital and volume intensive industry that has its own requirements and needs. Shredder operations generate a particular set of externalities. A shredder processes scrap metal from a variety of sources (auto bodies, home appliances, industrial scrap, construction and demolition debris, and other sources of metals) into pieces of a size, density and purity required by steel mills and foundries as raw feedstock for melting and use in the production of new finished steel and nonferrous metal products. The shredder facility operations typically include collection, sorting, shearing, shredding, torching and baling and require the use of multiple items of heavy equipment. Within a few seconds of running, metal shredders will reduce auto bodies, home appliances and other metal into fist or finger-sized pieces.

Typically, metal shredding uses do not include on site a motor vehicle wrecking yard use, as the highly industrial shredder use would be incompatible with the retail-oriented auto wrecking and salvage use. Shredder operation is its own primary use. An auto wrecking and salvage yard would be just one source of supply for a metal shredding use.

It should also be clear that a metal shredding use is not an “accessory” use to any other I-3 use. To so characterize it would be to allow the tail to wag the dog. An “accessory use” is by definition “[a] use incidental to the primary use of the development site.” EC 9.0500. A metal shredder on this site would be the dominant use. *Cf. Jaqua v. City of Springfield*, 193 Or App 573, 91 P3d 817 (2004)(June 9, 2004) (a hospital is not an auxiliary or accessory use in a residential zone).

Eugene’s failure to include metal shredders as a use allowed outright in the I-3 zone is understandable in view of the need to address other on-site or off-site impacts from the shredding operation. Shredders are typically viewed in the context of metal manufacturing uses and, given the capital intensive investment, operations succeed with higher volume and production throughput. Consequently, these uses are more suited to a 24/7/365 mindset, with continuous delivery of raw material and transport of finished product to customers (by truck at all times of the day). Shredder operations need to address noise, dust, odors and traffic, among other concerns, differently than an auto wrecking yard. Some may view the operation as loud, with different potential for risk of fire, explosions or flying metal.

Where the I-3 zone authorizes uses that are particularly high in off-site impacts, it requires Site Review procedures. See, e.g., “Mineral Resource Mining * * * Processing,” and “Asphalt Mixing and Batching/Concrete Mixing and Batching.” The code’s failure to subject the “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)” use to this kind of review suggests that the use was not intended to encompass metal shredding.

It is worth pointing out, too, that there is no basis in this code for saying the use is “close enough” in any respect to be included in the “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)” The I-3 zone in the former code had an “other uses similar” item in the list of permitted uses. See 9.470(g)(2000). The current code is structured differently. There are not “similar use” listings for the I-3 zone.

It is quite likely that, if the applicant for the zone verification letter had fully described the metal shredding use in appreciably more than one phrase in a single sentence, the city staff would have been more circumspect in issuing the verification letter. This letter has provided considerably more detail above about the use. We will supplement this letter with additional information published by the metals recycling industry.

Requested Interpretation #2: A Type II Traffic Impact Analysis Review under EC 9.8650 may be required for a metal shredding use at the Cross Street location.

There are four triggers listed in EC 9.8670 for a Traffic Impact Analysis Review, which is a Type II land use decision. One of those triggers is in (3):

The city has performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the roadway system

Eugene Planning Director

December 12, 2012

Page 4

in the vicinity of the development that do not meet adopted level of service standards.

Any review of the compliance of the proposed use needs to be sensitive to and identify the potential for such a TIA review. The verification letter ignored this possibility.

What is needed to make a determination about this issue is an empirical understanding of the actual operational characteristics of this proposed use. Shredders have become an important part of metal recycling in the US and around the globe, but it is important that zoning and any appropriate requirements are recognized within the decision-making process.

As we've indicated, shredder uses, to be successful, must have voracious appetites for raw materials, as one can appreciate when watching an automobile being processed into metal bits in mere seconds. To be cost effective the uses must continually operate to the maximum extent possible, ideally around the clock. Some understanding of the parameters of the use must be understood to determine whether the impact of what might seem a non-stop line of trucks to/from the site will pose a level of service issue for the local street system near the site.

My client looks forward to the Director's interpretation and the review of that interpretation, if necessary, by the Hearing Official.

Sincerely,



Bill Kloos

Cc: Client
Steve Pfeiffer

Encl. Verification letter, application, and supporting materials



Building & Permit Services
Land Use Management

99 West 10th Avenue
Eugene, OR 97401
(541) 682-8336 info
(541) 682-6806 fax

December 7, 2012

Mark Losco
Pacific Recycling Inc.
3300 Cross Street
Eugene, OR 97402

Subject: Zone Verification
Location: 3300 Cross Street
Map & Tax Lots #17-04-26-00-02000, 17-04-26-00-02002 & 17-04-27-00-00103

Dear Mr. Losco,

I am writing in response to your request dated December 6, 2012 regarding 3300 Cross Street in Eugene. The property is zoned I-3 Heavy Industrial which is governed under Eugene Code (EC) 9.2420 for uses and development standards. There is no overlay zone on this property. The Eugene Code, including Land Use Chapter 9, is available online at: <http://www.eugene-or.gov/citycode>. Pacific Recycling is a scrap metal recycling facility which is proposing to expand its business by installing metal shredding equipment and related improvements. Per Table EC 9.2450, scrap metal recycling is a permitted use in the I-3 zone, therefore, the project complies with local land use planning requirements.

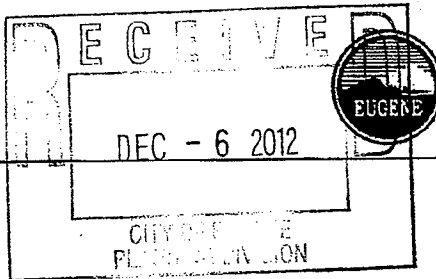
Please note this zone verification will be made available to the public and provided to interested parties, as well as being documented within the City's permit tracking system, in accordance with statutory requirements at ORS 227.175(11). Furthermore, this verification is a final determination at the local level and therefore may be appealed to the Land Use Board of Appeals, in accordance with statutory provisions beginning at ORS 197.835.

If you have any further questions feel free to contact Kelly Whitmill, Planning and Land Use Technician, at 541-682-6017.

Sincerely,

A handwritten signature in cursive script that reads "Katharine Kappa".

Katharine Kappa
Land Use Supervisor
for the City of Eugene Planning & Development Director



Planning & Development
Planning

City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401
(541) 682-5377
(541) 682-5572 Fax
www.eugene-or.gov

ZONE VERIFICATION REQUEST

Please complete the following form and provide the required information. If you have questions about filling out this application, please contact staff at the Permit and Information Center, 99 West 10th Avenue, Eugene, OR 97401, phone (541) 682-5377.

Location of Property:

3300 Cross Street - Eugene, OR 97402
11 Acre lot 17-04-27-000-00103

Zoning of Property:

I-3 Heavy Industrial

Proposed Use of Property, if applicable:

Metal Recycling and processing specifically the installation of a Shredder.

Filing Fee

The fee varies depending on staff time to process the request and will be charged once the request is complete. Please note that the fee must be paid prior to receiving the verification letter. Per the City's Construction & Development fee schedule, a zone verification is charged at \$88.00 per hour plus a 9% Administrative Fee (minimum charge is ½ hour or \$44.00 minimum plus 9% administrative fee).

Written Statement

Submit one paper copy and one CD copy (pdf or tiff format) of a written statement describing why the zone verification is being requested. If applicable, include information describing the proposed use including operating characteristics, building bulk and size, parking demand, and traffic generation per EC 9.1080. Please note that it is the applicant's responsibility to make sure that the CD and paper copies are identical.

Note: to request a copy of a certificate of occupancy or building permit information, please contact Inspection Support staff at 541-682-5283 or ceinspectionsupport@ci.eugene.or.us.

Contact Information

Name (print): MARK A. Losco

Company/Organization: Pacific Recycling Inc.

Address: 3300 Cross Street

City/State/Zip: Eugene, OR 97402 E-mail (if applicable): 7marko7@gmail.com

Phone: 541-255-9466

Fax: 541-461-1546

Signature:

WHITMILL Kelly E

From: Weiss David <david.weiss@biz.state.or.us>
Sent: Thursday, December 06, 2012 4:55 PM
To: DOHRMAN Rebekah L; '7marko7@gmail.com'
Cc: WHITMILL Kelly E; BRAUD Denny
Subject: RE: Pacific Recycling

Mark will provide the detailed project description info. As mentioned in a previous e-mail, the general project description we are using for the Industrial Development Bonds (IDBs) is "...providing funds to Pacific Recycling, Inc. to finance the costs of acquisition and installation of a shredder, related equipment and related improvements to scrap metal recycling facilities located at 3300 Cross Street, Eugene...."

My only request is that the end product of this be a letter addressed to me which describes the project, contains the statement "the project complies with local land use planning requirements," and provides backup to that statement that it complies. Let me know if you have any questions. If the fee can be waived, great; if not, it will be paid. I'd like to thank everybody for their work on expediting this request. Thanks.

Sincerely,

David Weiss, Business Finance Officer
Business Oregon (Oregon Business Development Department)
One World Trade Center
121 SW Salmon Street, Suite 205
Portland, OR 97204
(503) 229-6064 (phone) (503) 222-5050 (fax)
david.weiss@state.or.us (e-mail)



CONFIDENTIALITY NOTICE

This e-mail may contain information that is privileged or confidential. If you are not the addressee or it appears from the context that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: DOHRMAN Rebekah L [mailto:Rebekah.L.Dohrman@ci.eugene.or.us]
Sent: Thursday, December 06, 2012 4:00 PM
To: Weiss David; '7marko7@gmail.com'
Cc: WHITMILL Kelly E; BRAUD Denny
Subject: Pacific Recycling

Hi David and Mark,

Kelly Whitmill in the Planning Department is working on the State's request for documentation that Pacific Recycling's expansion project is in compliance with local land use laws. **Before she can take the next step, however, she does need a written description of the project.** Below is a synopsis of the project that Community Development drafted earlier this year. Feel free to confirm or expand upon this description:

Pacific Recycling, Inc. is proposing to invest in new metal shredding equipment that will provide a broader range of processing capabilities for vendors to use as a full-service recycling facility. The automated processing equipment will improve separation of various materials, reduce labor costs associated with manual sorting and cutting, and increase monthly production from 6,000 tons of ferrous metals to 10,000 tons.

Kelly is aware of the time sensitivity of this request and is accordingly expediting the request. She is also inquiring whether the associated fee may be waived.

Please respond directly to Kelly for anything related to this request: Kelly.E.Whitmill@ci.eugene.or.us; 541-682-6017

Thank you,

Rebekah

Rebekah Dohrman
City of Eugene
Community Development Division
99 W. 10th Avenue
Eugene, OR 97401
(541)682-5317
fax (541)682-5572
Rebekah.L.Dohrman@ci.eugene.or.us

NOTE: I am out of the office on Mondays and Fridays.

From: Weiss David [<mailto:david.weiss@biz.state.or.us>]
Sent: Thursday, December 06, 2012 3:25 PM
To: DOHRMAN Rebekah L
Subject: RE: Pacific Recycling

When are you around today and tomorrow? Will get back to you.

David Weiss, Business Finance Officer
Business Oregon (Oregon Business Development Department)
One World Trade Center
121 SW Salmon Street, Suite 205
Portland, OR 97204
(503) 229-6064 (phone) (503) 222-5050 (fax)
david.weiss@state.or.us (e-mail)



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This e-mail may contain information that is privileged or confidential. If you are not the addressee or it appears from the context that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.



December 21, 2012

Bill Kloos

Law Office of Bill Kloos, PC
375 W. 4th Ave., Suite 294
Eugene, OR 97401

Decision sent via
email on 12/21/12. KHK
(to all parties noted)

**Subject: Request for Planning Director's Interpretation for 3300 Cross Street,
Pacific Recycling, Inc. (City File # CI 12-2)**

Dear Mr. Kloos,

On December 11, 2012, the City received your request, submitted on behalf of Schnitzer Steel Industries, Inc., for a formal interpretation pursuant to EC 9.0040 ("Land Use Code and Decision Interpretation") related to metal shredding activity at 3300 Cross Street. Your interpretation request asks the Planning Director to issue an "interpretation" that makes two statements: 1. a metal shredder is not a permitted use in the I-3 Heavy Industrial zone; and, 2. a Traffic Impact Analysis Review under EC 9.8650 may be required for a metal shredding use at the Cross Street location.

As discussed below, your request regarding 3300 Cross Street does not constitute a request to interpret the land use code or a decision issued pursuant to the land use code under EC 9.0040. Because EC 9.0040(1) only authorizes the Planning Director to interpret the land use code and decisions issued there under, the Planning Director will not issue your requested "interpretation."

In *Willamette Oaks v. City of Eugene*, 2011 WL 6018218, LUBA No. 2011-73 (Or LUBA, 2011), *affirmed without opinion*, 248 Or App 262, 274 P3d 896 (2012), LUBA described a valid request for interpretation under EC 9.0040(1) as opposed to a request for something else that is beyond the authority granted by EC 9.0040. Specifically, LUBA stated:

EC 9.0040(1) only authorizes the planning director and hearings official to "interpret" the EC and decisions issued under the EC. The parties apparently agree that the targets of the requested interpretation are all part of the EC or decisions rendered under the EC. The parties do not

agree that the request is accurately characterized as a request for an "interpretation."

The terms "interpret" and "interpretation" are not defined in the EC. But the commonly understood meaning of those words is to explain the "meaning" of something. *Webster's Third New International Dictionary* (Unabridged 1981), 1182 ("interpret" means "[t]o explain or tell the meaning of: translate into intelligible or familiar language or terms[.]"); *Black's Law Dictionary*, 894 (9th ed. 2009) ("interpretation" means "[t]he process of determining what something, esp. the law or a legal document, means; the ascertainment of meaning to be given to words or other manifestations of intention."). Petitioner did not ask the planning director and hearings official to explain what the EC, including Ordinance 20440, and decisions rendered under those laws "mean."

....

Petitioner points out that EC 9.0040(1), unlike some other land use regulations that authorize interpretation of land use legislation, does not expressly require that the land use legislation be ambiguous. However, we do not read very much into that omission. The commonly understood meaning of the word "interpret" assumes the thing that is to be interpreted is unclear in some way. We certainly do not understand the city council's failure to state expressly that the decisions and legislation to be interpreted under EC 9.0040(1) must be unclear in some way to give the planning director the unrestrained right to interpret unambiguous EC language to say something other than what it unambiguously says. More to the point, in this case, that omission does not mean that the planning director and hearings official must treat petitioner's request under EC 9.0040(1) as a request for an interpretation, simply because petitioner characterizes the request as a request for an interpretation.

Like the request in *Willamette Oaks*, your first request does not ask the Planning Director to explain the meaning of an ambiguous term in the land use code or a decision rendered there under. Instead of identifying an ambiguous term in the code or a decision that requires the Planning Director's "interpretation," you merely assert that that the City made "a legal error" when it issued a zone verification regarding uses allowed in the I-3 zone and request that the City now conclude that "a metal shredder is not a permitted use in the I-3 Heavy Industrial zone." Your requested "interpretation" is actually a collateral attack on a previously issued zone verification. Because you do not identify an ambiguous term of which the Planning Director can explain its meaning (*i.e.*, interpret), the Planning Director is not authorized to render a decision under EC 9.0040(1) on your first requested "interpretation."

Like your first requested "interpretation," your second requested "interpretation" does not ask the Planning Director to explain the meaning of an ambiguous term in the land use code or a decision issued there under. Rather, you assert that the City erred in issuing the zone verification without considering whether a TIA may be needed for the site. Your request that the Planning Director issue a statement that TIA may be needed for a metal shredding use at the Cross Station location fails to identify an ambiguous term of which the Planning Director can explain its meaning. Accordingly, the Planning Director is not authorized to render a decision under EC 9.0040(1) on your second requested "interpretation."

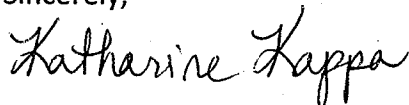
For the reasons set forth above, your requests are not requests for interpretation under EC 9.0040(1) and, therefore, the Planning Director cannot issue an interpretation pursuant to that code provision.

Appeal

According to EC 9.0040, appeals of a Planning Director land use code interpretation shall be heard by a Hearings Official in the manner set out in EC 9.7600 – 9.7635. The decision may be appealed within 12 days of the date the interpretation was mailed and shall be submitted on a form approved by the City Manager and accompanied by a fee.

If you have any questions regarding this determination, please contact me at (541) 682-5309 or via email at katharine.h.kappa@ci.eugene.or.us.

Sincerely,

A handwritten signature in cursive script that reads "Katharine Kappa".

Katharine Kappa, Land Use Supervisor
For the City of Eugene Planning Director

cc: Kathryn Brotherton
Mark Losco

RECEIVED



Planning & Development
Planning

JAN 02 2013

CITY OF EUGENE
BUILDING & PERMIT SVCS

City of Eugene
99 West 10th Avenue
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APPEAL OF PLANNING DIRECTOR'S DECISION

This appeal form applies to appeals of interpretation of this Land Use Code made according to EC 9.0040(1) and to appeals to all Type II land use applications. The appeal of the Planning Director's decision provides for a review of an administrative decision by a higher review authority specified in this Land Use Code. The Planning Director's decision may be affirmed, reversed, or modified.

Please check one of the following:

Adjustment Review <input type="checkbox"/> Minor <input type="checkbox"/> Major <input checked="" type="checkbox"/> Code Interpretation	Modification <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> Planned Unit Development. <input type="checkbox"/> Site Review <input type="checkbox"/> Willamette Greenways	<input type="checkbox"/> Standards Review
<input type="checkbox"/> Hazardous Materials Review	Partition <input type="checkbox"/> Tentative Plan <input type="checkbox"/> Final Plat	<input type="checkbox"/> Subdivision <input type="checkbox"/> Tentative Plan <input type="checkbox"/> Final Plat
Historic Property <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Moving	Planned Unit Development, <input type="checkbox"/> Final	<input type="checkbox"/> Traffic Impact Analysis
<input type="checkbox"/> Variance	<input type="checkbox"/> Site Review	Vacation <input type="checkbox"/> Improved Public R-O-W <input type="checkbox"/> Improved Public Easement <input type="checkbox"/> Unimproved Public R-O-W with Re-dedication

City File Name: DIRECTOR INTERPRETATION

City File Number: CE 12-2

Date of Planning Director Decision: 12-21-2012

Date Appeal Filed: 1-2-2013

(This date must be within 12 days of the date of the mailing of the Planning Director's decision.)

☒ Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the Planning Director's decision is inconsistent with applicable criteria. Please contact staff at the Permit and Information Center, 99 West 10th Avenue, (541) 682-5377, for further information on the appeal process.

☒ A filing fee must accompany an appeal of a Planning Director decision, with some exceptions for neighborhood groups. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a planning director decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

APPELLANT

Name (print): BILL KLOOS Phone: 541-343-8916
Address: 375 W. 4TH AVE, SUITE 204,
City/State/Zip: EUGENE, OR 97401
Signature: Bill Kloos

APPELLANT

Name (print): _____ Phone: _____
Address: _____
City/State/Zip: _____
Signature: _____

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: _____

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW

375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
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January 2, 2013

Carolyn Burke, Planning Director
Eugene Planning and Development
Atrium Building
99 West 10th Ave.
Eugene, OR 97401

Re: Appeal of Director Interpretation under EC 9.0040 relating to:
EC 9.0500; EC 9.2450.
City File No. CI 12-2

Dear Ms. Burke:

Please accept this letter, the enclosed appeal form, and enclosed filing fee as an appeal of the Director's December 21 interpretation in this matter. This appeal is filed on behalf of Schnitzer Steel Industries Inc. ("SSI"). SSI seeks an interpretation of the uses allowed in the I-3 zone, as listed in the Table at EC 9.2450.

With this appeal SSI seeks the interpretation posed in the first question stated in my December 11, 2012 letter. That question was:

A metal shredding use, as proposed for the 3300 Cross Street property, is a primary use that is not permitted in Eugene's I-3 Heavy Industry zone.

The Director erroneously refused to provide the interpretation. Several reasons are stated in the December 21 decision for refusing to provide the interpretation. None holds water.

First, the Director said that the question posed above is not a request to interpret the code. It certainly is such a request. The question poses a use and asks whether it falls within a use listed in the code. It is not clear from the plain language of the code that the use is included; therein lies the ambiguity. Code interpretation requests can't be formulated more simply than that.

Second, the Director references the *Willamette Oaks* litigation, presumably as a recharacterization of this request, as not being a request for a code interpretation. *Willamette Oaks* is not relevant here. It involved an interpretation request being used as a collateral attack on the validity of a legislative enactment of several years earlier. Here we have a simple interpretation request.

This is not a collateral attack on the zone verification letter. That letter has been separately appealed to LUBA. The current application is filed under a separate code section that allows for a more formal public process to interpret the code. The zone verification process, in contrast, generates a decision of a much more humble pedigree. It is conducted in the dark of night, without any public notice or any opportunity for a public hearing.

With respect to the merits of this application, we offer the following summary of the interpretive issue above.

The use is a “metal shredder.” Metal shredding is a distinct, large-scale, capital and volume intensive industry that has its own requirements and needs. Shredder operations generate a particular set of externalities. A shredder processes scrap metal from a variety of sources (auto bodies, home appliances, industrial scrap, construction and demolition debris, and other sources of metals) into pieces of a size, density and purity required by steel mills and foundries as raw feedstock for melting and use in the production of new finished steel and nonferrous metal products. The shredder facility operations typically include collection, sorting, shearing, shredding, torching and baling and require the use of multiple items of heavy equipment. Within a few seconds of running, metal shredders will reduce auto bodies, home appliances and other metal into fist or finger-sized pieces.

As a distinct industrial use, metal shredding has its own presence on the web. The highest ranked sites are sponsored by manufacturers of metal shredding equipment; many videos are posted of this equipment in action. There are also a fair number of articles discussing metal shredders already operating in communities. A common theme in these sites is about communities and local governments trying to get a better handle on regulating the environmental externalities of particular installations. Look for “metal shredder” on the web.

To restate our interpretation question: Does any use listed in the I-3 zone include a metal shredder? It does not appear in any listed use.

The I-3 zone lists five distinct types of recycling facilities that are allowed in the zone. Each of these five uses is defined in the code at EC 9.0500. Four of the “recycling” uses that are listed and defined do not come close to the “metal shredder” use described here. That leaves the fifth use listed in the I-3 zone: “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage).”

The definition in the code at EC 9.0500 that captures this use is:

Wrecking Yard, Motor Vehicles and Building Materials. A premise used for the storage and dismantling of used motor vehicles, manufactured dwellings, recreational vehicles, machinery and/or building materials, or parts thereof. May also include sale of parts or materials.

This use encompasses vehicle wrecking and salvage, which is colloquially referred to as a “pick and pull” facility, where end-of-life vehicles are stored so that retail or wholesale customers can retrieve used auto parts. There are a number of these facilities in the Eugene/Springfield area. Cars and other vehicles are dismantled. The dismantling process first typically includes detitling, general degarbaging, and formal processes for removal, recovery and recycling of the various fluids and hazardous materials, such as mercury switches, gasoline, freon, power steering fluid and brake fluid. Then, re-usable auto parts are recovered for sale. Once a vehicle has no further salvageable parts value, the residual vehicle hulk is flattened with either a portable or a stationary car crusher to facilitate transport to a different location – a metal shredder, to manufacture steel shred and recoverable non-ferrous metals.

Wrecking yard uses, which focus on salvaging useable parts from end-of-life vehicles before they are further processed, do not include a metal shredding use. Typically, metal shredding uses do not include on site a motor vehicle wrecking yard use, as the highly industrial shredder use would be incompatible with the retail-oriented auto wrecking and salvage use. A metal shredder operation is its own primary use. An auto wrecking and salvage yard would be just one source of supply for a metal shredding use.

It should also be clear that a metal shredding use is not an “accessory” use to any other I-3 use. To so characterize it would be to allow the tail to wag the dog. An “accessory use” is by definition “[a] use incidental to the primary use of the development site.” EC 9.0500. A metal shredder on this site would be the dominant use. *Cf. Jaqua v. City of Springfield*, 193 Or App 573, 91 P3d 817 (2004)(June 9, 2004) (a hospital is not an auxiliary or accessory use in a residential zone).

It is worth pointing out, too, that there is no basis in this code for saying the use is “close enough” in any respect to be included in the “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)” The I-3 zone in the former code had an “other uses similar” item in the list of permitted uses. See 9.470(g)(2000). The current code is structured differently. There are not “similar use” listings for the I-3 zone.

Eugene’s failure to include metal shredders as a use allowed outright in the I-3 zone is understandable in view of the need to address other on-site or off-site impacts from the shredding operation. Shredders are typically viewed in the context of metal manufacturing uses and, given the capital intensive investment, operations succeed with higher volume and production throughput. Consequently, these uses are more suited to a 24/7/365 mindset, with continuous delivery of raw material and transport of finished product to customers (by truck at all times of the day). Shredder operations need to address noise, dust, odors and traffic, among other concerns, differently than an auto wrecking yard. Some may view the operation as loud, with different potential for risk of fire, explosions or flying metal.

Where the I-3 zone authorizes uses that are particularly high in off-site impacts, it requires Site Review procedures. See, e.g., “Mineral Resource Mining * * * Processing,” and “Asphalt Mixing and Batching/Concrete Mixing and Batching.” The code’s failure to subject the

Planning Director

January 2, 2013

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"Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)" use to this kind of review suggests that the use was not intended to encompass metal shredding.

My client looks forward to the Hearing Official's interpretation. I expect to file additional information in support of this appeal.

Sincerely,



Bill Kloos

Cc: Client
Steve Pfeiffer



MILLER NASH LLP

ATTORNEYS AT LAW

Engaged Guidance, Exceptional Counsel.

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Jeffrey G. Condit, P.C.
Admitted in Oregon and Washington
jeff.condit@millernash.com
(503) 205-2305 direct line

March 5, 2013

VIA E-MAIL
KATHARINE.K.KAPPA@
CI.EUGENE.OR.US

City of Eugene Hearings Official
c/o Katharine Kappa
Planning & Development
Planning Division
City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401

Subject: Schnitzer Steel Appeal of Request for Planning Director's Interpretation
(CI 12-2 & CI 13-1)

Dear Hearings Official:

We represent Pacific Recycling, Inc. ("Pacific"). Pacific's expansion of its metal recycling operation at 3300 Cross Street in the city of Eugene is the focus of the Planning Director's interpretations noted above. Please accept these written comments into the record of the March 13, 2013, proceedings in this matter.

DECISIONS ON APPEAL

The appeals arise from two requests for an interpretation filed by Schnitzer Steel Industries, Inc. ("Schnitzer") under Eugene Code ("EC") 9.0040. The first request (CI-12-2) was filed on December 11, 2012, and denied by the City on December 21, 2012. The Planning Director concluded that the request did not qualify as an "interpretation" within the meaning of the Code, but was rather an impermissible collateral attack on the City's previous zoning verification decision. The zoning verification decision concluded that Pacific's expansion of its metal recycling operation, which includes the installation of a metal shredder, was a permitted use in the City's I-3 Heavy Industrial Zone.



MILLER NASH^{LLP}

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City of Eugene Hearings Official

March 5, 2013

Page 2

Schnitzer's second request, filed on January 10, 2012, removed direct references to Pacific's operation, but requested an interpretation that a metal shredder is not allowed as a primary use in the zone. On January 18, 2013, the Planning Director denied this interpretation on the merits, concluding that the plain language of EC 9.2450, which permits "Recycling—scrap and dismantling yard (includes vehicle wrecking and salvage)," includes both vehicle wrecking and salvage and any other kind of recycling use. The Planning Director concluded that any use that falls within that category may use any type of equipment—including a metal shredder—that facilitates the use.

Schnitzer appealed both decisions, which were consolidated for the purposes of the March 13 hearing.

PACIFIC'S ARGUMENT

Pacific concurs with the analysis and conclusion of the Planning Director with regard to both decisions. We add the following arguments in support of these determinations.

CL 12-2: As noted previously, the City issued a zoning verification letter on December 7, 2012, concluding that Pacific's expansion was a permitted use in the I-3 Zone. On December 14, 2012, the City issued a land use compatibility statement reaching the same conclusion. Schnitzer appealed both of these determinations to the Land Use Board of Appeals ("LUBA"). The appeals were consolidated into a proceeding before LUBA (LUBA No. 2012-93 and No. 2012-96).

Schnitzer's first request is clearly a collateral attack on these decisions. Schnitzer was not requesting an interpretation, it was arguing that the City's prior determination, specifically with regard to Pacific's expansion, was wrong. Not only was this attempt properly rejected as being beyond the scope of the City's interpretation procedure, the City has no jurisdiction to revisit that decision: Once a decision has been appealed to LUBA, the City loses jurisdiction over that decision until the appeal is resolved. See Rose v. City of Corvallis, 49 Or LUBA 260 (2005). (Absent statutory authority to the contrary, a local government has no jurisdiction to modify a land use decision that is before LUBA or the Court of Appeals.)

The Planning Director appropriately rejected Schnitzer's December 11, 2012, request for an interpretation.



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City of Eugene Hearings Official

March 5, 2013

Page 3

CL 13-1: The specific references to Pacific's operation were removed from Schnitzer's second request, and so a decision would have no direct effect on the City's prior decisions. But it is also clearly directed at Pacific's installation of a metal shredder to facilitate its expansion, and so teeters on the same edge. Regardless, the Planning Director's interpretation is correct on the merits and should be affirmed.

PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P.2d 1143 (1993) and State v. Gaines, 346 Or 160, 206 P.3d 1042 (2009) stand for the proposition that enactments are construed based upon the text and context of the enactment, legislative history, and (if the former does not resolve the interpretation) maxims of statutory construction. The Planning Director's interpretation relies on a plain reading of the permitted use as set forth in EC 9.2450. Pacific concurs with the Planning Director's analysis.

Pacific further notes that EC 9.0500 defines "use" as:

"[t]he purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained."

This definition supports the Planning Director's conclusion that it is the allowed activity on the site, not the infrastructure that supports that activity that constitutes the "use." Installation of a metal shredder will enable Pacific to more efficiently demolish vehicles and other scrap metal and separate out the components for recycling/resale. As the Planning Director noted, it is equipment that facilitates the designated use—recycling and vehicle wrecking and salvage; it is not a "use" itself within the meaning of the EC.

The Code context supports this reading. All of the uses listed in table 9.2450 are stated in terms of the allowed activity on the site. None of these uses are distinguished based upon the equipment used to facilitate the use.

Schnitzer argues that a metal shredder will create significant offsite impacts not contemplated by a recycling use involving scrap, dismantling, and vehicle wrecking and salvage, and that, therefore, it should be considered a separate use. There is no basis in the Code for drawing this distinction. Pacific notes that this type of recycling operation is only allowed in the I-3 Zone; it is not permitted as even a conditional use in the City's other industrial zones. The I-3 Zone is the City's heavy industrial zone; its express purpose is to accommodate high-impact uses. EC 9.2420 states:



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City of Eugene Hearings Official

March 5, 2013

Page 4

"The purpose of the I-3 Heavy Industrial Zone is to implement the Metro Plan by providing areas to serve a range of manufacturing uses including those involved in the processing of large volumes of raw materials into refined products and/or industrials uses that have significant external impacts. In general, these areas are designated for heavy industry in the Metro Plan. Heavy industrial uses often have transportation needs that include both rail and truck. Less intensive industrial uses that are permitted in the Light-Medium Industrial Zone are also permitted."

The I-3 Zone is the most intense industrial zone under the City Code. The limitation of this type of recycling use to the I-3 Zone indicates that the City Council understood it to be a heavy industrial use with potentially significant impacts when it adopted this provision. The installation of a metal shredder as part of Pacific's expansion of its facilities will definitely allow Pacific to process a larger volume of materials more efficiently and thereby improve its ability to compete with companies such as Schnitzer. This is precisely the kind of use that the I-3 Zone is for.

Schnitzer's proffered interpretation that a piece of equipment that facilitates expansion of a permitted use is not allowed unless it is specifically referenced in the description of the use is not supported by the text or context of the Code.

CONCLUSION

The Planning Director correctly rejected Schnitzer's first request for an "interpretation" and correctly interpreted the Code in response to Schnitzer's second request. Pacific respectfully requests that the Hearings Officer uphold the Planning Director's decisions.

Very truly yours,

Jeffrey G. Condit, P.C.

MEMORANDUM

March 13, 2013

To: Ross Williamson, Hearings Official

From: Katharine Kappa, Land Use Supervisor (Building & Permit Services Division)

Subject: Appeal of Code Interpretation for Schnitzer Steel (CI 13-1)

Background Information

On January 10, 2013, a code interpretation request was submitted by Bill Kloss on behalf of his client, Schnitzer Steel. This code interpretation request was not site specific. Rather, the applicant requested an interpretation of permitted uses in the I-3 zone per Eugene Code Table 9.2450. The following three interpretations were requested:

1. Is a metal shredder allowed either as a primary or accessory use in the I-3 zone, as listed in Eugene Code Table 9.2450?
2. Is a "Wrecking Yard, Motor Vehicles and Building Materials: use (as defined in Eugene Code 9.0500) the only primary use allowed as a "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)" use listed in Table 9.2450?
3. If not, and other primary uses qualify as "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)" (Table 9.2450) uses, please identify those uses and explain the characteristics that they possess.

On January 18, 2013, the City rendered its decision on this code interpretation application.

On January 30, 2013, Bill Kloos, on behalf of Schnitzer Steel, filed an appeal of this decision. In accordance with Eugene Code Section 9.0040(1), an appeal of a code interpretation decision shall be heard by a hearings official in the manner set out in Eugene Code 9.7600 – 9.7635. As such, the City has scheduled a public evidentiary hearing to consider the matter before the Eugene Hearings Official.

ATTACHMENTS:

1. Applicant's Original Application for Code Interpretation
2. Planning Director Decision on Code Interpretation (dated 1/18/13)
3. Appeal Statement from Bill Kloos on behalf of Schnitzer Steel
4. Testimony from Miller Nash Attorneys on behalf of Pacific Recycling (received by City 3/6/13)

REFERENCE:

Eugene Code Section 9.2450 (Industrial Zone Land Use and Permit Requirements)
Eugene Code Section 9.0500 (Definitions)

For more information, please contact Katharine Kappa, Land Use Supervisor at 99 West 10th Avenue, Eugene, Oregon, (541)-682-5309 or email Katharine Kappa at:
Katharine.h.kappa@ci.eugene.or.us



C113-1

**Planning & Development
Planning**

**LAND USE CODE AND DECISION
INTERPRETATION REQUEST**

RECEIVED

JAN 10 2013

City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401
(541) 682-5377
(541) 682-5572 Fax
www.eugene-or.go

Please complete the following form and provide the required information. If you have questions about filling out this application, please contact staff at the Permit and Information Center, 99 West 10th Avenue, Eugene, OR 97401, phone (541) 682-5377.

Code Section(s) to be Interpreted (List specific code section(s) where an interpretation is being requested.):

EC 9.0040, 9.0500, 9.2450,

Does this interpretation request pertain to a specific land use application or building permit:

☐ Yes ☒ No

If so provide application or permit number (s): _____

Filing Fee

☒ A filing fee must accompany all applications. The fee varies depending on the type of application and is adjusted periodically by the City Manager. Check with the Planning staff at the Permit and Information Center to determine the required fee or check the City web site at: www.eugeneplanning.org

Written Statement

☒ Provide 3 paper copies and one CD copy of all application materials (i.e. written statement, site plans, etc.) in pdf format at the time of initial submittal. Please note that it is the applicant's responsibility to make sure that the CD and paper copies are identical. Following completeness review, an updated CD and additional paper copies may be required. All site plans must be folded to a size equal or less than 11" x 17".

Contact Information

Name (print): BILL KLOOS

Company/Organization: LAW OFFICE BILL KLOOS PC

Address: 375 W. 4TH AVE. SUITE 204

City/State/Zip: EUGENE OR 97401 E-mail (if applicable): BILL KLOOS @ LAND USE OREGON .COM

Phone: 541-343-8596

Fax: _____

Signature: [Signature]

LAW OFFICE OF BILL KLOOS PC

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January 10, 2013

Carolyn Burke, Planning Director
Eugene Planning and Development
Atrium Building
99 West 10th Ave.
Eugene, OR 97401

RECEIVED
JAN 10 2013
CITY OF EUGENE
BUILDING & PERMIT SVCS

Re: Request for Director Interpretation under EC 9.0040 relating to:
EC 9.0500 and EC 9.2450

Dear Ms. Burke:

Please accept this letter, the enclosed form, and enclosed filing fee as a request for a Director Interpretation of the Eugene Code ("EC") filed on behalf of Schnitzer Steel Industries Inc. ("SSI").

Table 9.2450 lists uses that are permitted in the I-3 zone. One of the listed uses, "Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)" is ambiguous because (i) it is undefined and (ii) its relationship to the "Wrecking Yard, Motor Vehicles and Building Materials" use, as defined in EC 9.0500, is unclear. Given this ambiguity, it is unclear if a metal shredder is permitted in the I-3 zone, either as a primary or accessory use. Therefore, SSI requests that the City explain the meaning of the ambiguous terms in the code (Table 9.2450 and EC 9.0500), and interpret those provisions to determine if a particular use is permitted in the I-3 zone. Specifically, SSI requests the following three interpretations of the closely related EC provisions:

1. Is a metal shredder allowed either as a primary or accessory use in the I-3 zone, as listed in EC Table 9.2450?
2. Is a "Wrecking Yard, Motor Vehicles and Building Materials" use (as defined in EC 9.0500) the only primary use allowed as a "Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)" use listed in Table 9.2450?
3. If not, and other primary uses qualify as "Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)" (Table 9.2450) uses, please identify those uses and explain the characteristics that they possess.

Analysis

1. Is a metal shredder allowed either as a primary or accessory use in the I-3 zone, as listed in EC 9.2450 Table?

With this request we describe a use (metal shredding), and seek an interpretation as to whether the use is allowed, either as a primary or accessory use, in the I-3 zone. The interpretation is necessary because Table 9.2450 and EC 9.0500 are ambiguous. For the reasons described below, we believe that the correct interpretation is that a metal shredding use is not allowed in the I-3 zone.

The Metal Recycling Process

The code allows five kinds of recycling uses in the I-3 zone, four of which are defined. Table 9.2450. The fifth, undefined recycling use is "Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)." To properly interpret Table 9.2450 and determine whether a particular recycling-related use such as metal shredding is allowed, one must understand the multi-step metal recycling process.

Each step in the metals recycling process is a separate use. Key distinctions in each step of the process include the intensity of processing and the finished product. For example, the scrapping, dismantling and sorting step produces scrap metal and salvageable material, whereas the melting and re-forging step produces steel plate, rebar, wire rod, merchant bar and other specialty products. Generally, the steps include:

1. **Collection of Unprocessed Scrap** -- The first step is the collection of unprocessed scrap metal, which typically involves businesses and individuals delivering unprocessed scrap to a scrapping, dismantling and sorting facility.
2. **Scrapping, Dismantling and Sorting** -- During this phase of the process, vehicles and other sources of metal are dismantled, or "scrapped." The dismantling process first typically includes detitling, general degarbaging, and formal processes for removal, recovery and recycling of the various fluids and hazardous materials, such as mercury switches, gasoline, freon, power steering fluid and brake fluid. Then, re-usable auto parts are recovered for sale. Once a vehicle has no further salvageable parts value, the residual vehicle hulk is flattened with either a portable or a stationary car crusher. Additional light processing of the materials may occur, such as torch cutting or mobile shearing. The light processing of the materials, such as mobile shearing and crushing, is done to facilitate removal of valuable parts or for transport of the scrap to a different location – a metal shredder, to further process and produce steel shred and recoverable non-ferrous metals. This step is often referred to in the industry as a "wrecking yard," "pick and pull" or a "feeder yard."

3. **Processing Facility** -- Dismantled and sorted scrap, such as crushed vehicles or prepared scrap materials, are then transported from a feeder yard to a high intensity processing facility, where scrap metal is shredded by a metal shredder and processed for foundries. The purpose of the heavy processing is to make the scrap more uniform in size so that it is easier and more efficient for the steel mills and forges to melt into products. This step is a highly intense use, and a **metal shredder** is a critical component of a scrap metal processing facility. A metal shredder processing facility uses feedstock scrap metal from a variety of sources (auto bodies, home appliances, industrial scrap, construction and demolition debris, and other sources of metals) and reduces the metal into pieces of a specified size, density and purity required by steel mills and foundries as raw feedstock for melting and use in the production of new finished steel and nonferrous metal products. The shredder facility operations typically include collection, sorting, and shredding, and require the use of multiple items of heavy equipment. Within a few seconds of running, metal shredders will reduce auto bodies, home appliances and other metal pieces into fist or finger-sized pieces referred to as "shred."
4. **Melting and Re-Forging** -- The final step typically occurs in a steel mill or foundry, where processed scrap is melted down and formed into useable materials, such as steel plate, rebar, wire rod, merchant bar and other specialty products.

Correlating the Metal Recycling Process to the Uses Described in the EC

When the industry-accepted metals recycling process is correlated to the uses allowed in the I-3 zone, the "scrapping, dismantling and sorting" step is what is described in the "Wrecking Yard, Motor Vehicles and Building Materials" use, defined at EC 9.0500¹, and is allowed in the I-3 zone as a "Recycling -- Scrap and dismantling yard (includes vehicle wrecking and salvage)" use. A wrecking yard and small scrap metal yard uses are also referred to as a feeder yards, but that term is not defined in the code. The unifying feature of the terms in the code and this step of the metals recycling process is that the intensity of the processing is limited to "dismantling."

Metal Shredding is a Primary Use that is Not Allowed in the I-3 Zone

Metal shredding is a distinct and separate process from dismantling. It is incompatible with dismantling operations, which typically have a retail-oriented auto wrecking and salvage use that is open to the public, because metal shredding creates noise, dust, odors, traffic, and the potential for risk of fire, explosions and flying metal. As such, metal shredding is a primary use that is not allowed in the I-3 zone. A dismantling facility, such as an auto wrecking and salvage yard or feeder yard, would be just one source of supply for a metal shredding operation/use.

A metal shredding use is not an "accessory" use to any other I-3 use. To so characterize it would be to allow the tail to wag the dog. An "accessory use" is by definition "[a] use incidental to the

¹ Wrecking Yard, Motor Vehicles and Building Materials is defined in EC 9.0500 as, "A premise used for the storage and dismantling of used motor vehicles, manufactured dwellings, recreational vehicles, machinery and/or building materials, or parts thereof. May also include sale of parts or materials."

primary use of the development site.” EC 9.0500. If a metal shredder was added to a dismantling facility, the shredder would be the dominant use, converting the use to a processing facility. *Cf. Jaqua v. City of Springfield*, 193 Or App 573, 91 P3d 817 (2004) (June 9, 2004) (a hospital is not an auxiliary or accessory use in a residential zone).

It is worth pointing out that there is no basis in this code for saying the use is “close enough” in any respect to be included in the “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)” use, or any use permitted in the I-3 zone. The I-3 zone in the former code had an “other uses similar” item in the list of permitted uses. See 9.470(g)(2000). The current code is structured differently. There are not “similar use” listings for the I-3 zone.

Contextual Support for Interpreting the I-3 Zone to Not Allow Metal Shredding

Eugene’s failure to include metal shredders as a use allowed outright in the I-3 zone is understandable in view of the need to address other on-site or off-site impacts from the shredding operation. Shredders are typically viewed in the context of metal manufacturing uses and, given the capital intensive investment, operations succeed with higher volume and production throughput. Consequently, these uses are more suited to a 24/7/365 mindset, with continuous delivery of raw material and transport of finished product to customers (by truck at all times of the day). Shredder operations need to address noise, dust, odors and traffic, among other concerns, differently than an auto wrecking yard. Some may view the operation as loud, with different potential for risk of fire, explosions or flying metal.

Where the I-3 zone authorizes uses that are particularly high in off-site impacts, it requires Site Review procedures. See, e.g., “Mineral Resource Mining * * * Processing,” and “Asphalt Mixing and Batching/Concrete Mixing and Batching.” The code’s failure to subject the “Recycling – Scrap and dismantling yard (includes vehicle wrecking and salvage)” use to this kind of review suggests that the use was not intended to encompass metal shredding.

2. Is a “Wrecking Yard, Motor Vehicles and Building Materials” use (as defined in EC 9.0500) the only primary use allowed as a “Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)” use listed in Table 9.2450?

Given the similarity in the two ambiguous terms, that they are both limited to “dismantling” and that the finished product is metal that is salvageable or scrap that is eligible for further processing, it is reasonable to interpret the terms so that the “Wrecking Yard, Motor Vehicles and Building Materials” is a use that is allowed in the I-3 zone. It is less clear whether a wrecking yard is the exclusive use allowed in the I-3 zone. The fact that Table 9.2450 elected to not list “Wrecking Yard, Motor Vehicles and Building Materials” as a use allowed in the I-3 zone, and instead employs the more general term “Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)” suggests that other recycling related uses are permitted in the I-3 zone. However, the limitations on recycling uses allowed in the I-3 zone cannot be ignored, meaning that the only recycling use allowed are those related to scrap and dismantling, as discussed below.

3. **If not, and other primary uses qualify as “Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)” (Table 9.2450) uses, please identify those uses and explain the characteristics that they possess.**

If uses other than a “Wrecking Yard, Motor Vehicles and Building Materials” are allowed as “Recycling - scrap and dismantling yard (includes vehicle wrecking and salvage)” in the I-3 zone, then the characteristics of those uses should reflect the distinct steps in the metals recycling process that are generally accepted by the industry. The only metals recycling uses allowed in the I-3 zone are those that are limited to dismantling and producing scrap. Just as a steel mill or foundry would not be considered a “scrap and dismantling yard” use, notwithstanding the fact that both uses are related to metals recycling, a processing facility or metal shredder that produces shred is not a “scrap and dismantling yard” use allowed in the I-3 zone.

Conclusion

A scrap metal shredder operation/facility and use is not described in the Eugene Land Use Code. Metal shredding facilities are unique heavy industrial operations that require site specific operational controls. Metal shredding facilities are not small scrap yards where light industrial processing and dismantling occur. Neither are they auto wrecking yards where cars are prepared and dismantled, prior to processing. Both small scrap yards and automotive wrecking yards “feed” and provide materials to be processed by a metal shredder. Conflating the metal shredder use into several less intense uses allowed in the I-3 would violate both the text and the context of the code, not to mention distinctions recognized in the industry.

My client looks forward to the Director’s interpretation and the review of that interpretation, if necessary, by the Hearing Official.

Sincerely,



Bill Kloos

Cc: Client
Steve Pfeiffer



**Planning & Development
Planning**

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January 18, 2013

Bill Kloos
Law Office of Bill Kloos, PC
375 West 4th Avenue, Suite 204
Eugene, OR 97401

Subject: Request for Planning Director's Interpretation for Schnitzer Steel (CI 13-1)

On January 10, 2013, the City of Eugene received your code interpretation request, submitted on behalf of your client Schnitzer Steel, Inc., requesting that the Planning Director answer the three questions you pose by *analyzing* and *applying* the City's code. In keeping with the scope of the City's Code Interpretation process, your three questions appear to request an interpretation of the term: "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)." Below is an interpretation for this use category, as well as brief responses to your three requested "interpretations."

Table 9.2450 Industrial Zone and Land Use Permit Requirements provides, in part:

	I-1	I-2	I-3
Manufacturing (Includes processing, assembling, packaging, and repairing)			
Recycling- scrap and dismantling yard (includes vehicle wrecking and salvage)			P

The plain language of Table 9.2450 states that this use category "includes" vehicle wrecking and salvage. While EC 9.0050 does not define the phrase "vehicle wrecking and salvage," EC 9.0050 defines "wrecking yard, motor vehicles and building materials" as:

A premise used for the storage and dismantling of used motor vehicles, manufactured dwellings, recreational vehicles, machinery and/or building materials, or parts thereof.
May also include sale of parts or materials.

The use category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)" includes uses that fall within the parameters of the above-quoted definition of "wrecking yard, motor vehicles and building materials."

Because the Table 9.2450 does not *limit* the use category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)" to only "vehicle wrecking and salvage," but states that the category *includes* vehicle wrecking and salvage, based on the plain language of the code, the use category also includes any other use that falls under the "Recycling – scrap and dismantling yard" category. EC 9.0050 does not define "recycling," "scrap yard" or "dismantling yard," thus, the Planning Director relies on Webster's International Dictionary to define these terms.

Sent via US Mail
1/18/13. KHK

Webster's International Dictionary (Merriam-Webster.com) defines "recycle" as:

- 1 : to pass again through a series of changes or treatments: as
 - a*: to process (as liquid body waste, glass, or cans) in order to regain material for human use
 - b*: RECOVER
 - c*: to reuse or make (a substance) available for reuse for biological activities through natural processes of biochemical degradation or modification <green plants *recycling* the residue of forest fires> <*recycle* ADP back to ATP>
 - 2 : to adapt to a new use : ALTER
 - 3 : to bring back : REUSE <*recycles* a number of good anecdotes — Larry McMurtry>
 - 4 : to make ready for reuse <a plan to *recycle* vacant tenements>
- intransitive verb*
- 1 : to return to an earlier point in a countdown
 - 2 : to return to an original condition so that operation can begin again —used of an electronic device

Webster's International Dictionary (Merriam-Webster.com) does not define "scrapyard," however, Webster's Third New International Dictionary defines "scrapyard" as:

: a place for receiving or handling scrap

Webster's International Dictionary (Merriam-Webster.com) defines "scrap" as:

- 1 *plural*: fragments of discarded or leftover food
- 2 *a*: a small detached piece <a *scrap* of paper>
 - b*: a fragment of something written, printed, or spoken <*scraps* of conversation>
 - c*: the least bit <not a *scrap* of evidence>
- 3 *plural*: CRACKLINGS
- 4 *a*: fragments of stock removed in manufacturing
 - b*: manufactured articles or parts rejected or discarded and useful only as material for reprocessing; *especially*: waste and discarded metal

Neither Webster's International Dictionary (Merriam-Webster.com) nor Webster's Third New International Dictionary defines "dismantling yard" but Webster's International Dictionary (Merriam-Webster.com) defines "dismantle" as:

- 1 : to take to pieces; *also*: to destroy the integrity or functioning of
- 2 : to strip of dress or covering : DIVEST
- 3 : to strip of furniture and equipment

In addition to uses that fall within the parameters of "wrecking yard, motor vehicles and building materials," the Planning Director interprets the use category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)" to include any recycling use (as the term "recycling" is defined above) that falls within the parameters of the definitions set forth above. The use occurring on the property, not the specific equipment operated to facilitate the use, determines whether a recycling facility falls within the parameters of the above-definitions.

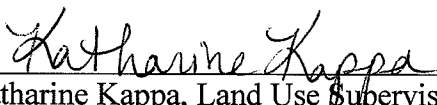
Regarding the specific "interpretations" requested in your January 10, 2013, letter:

1. You ask about a piece of equipment that you refer to as a "metal shredder." Uses that falls within the parameters of the definitions described above can utilize any type of equipment to facilitate that use. Thus, so long as the equipment does not violate another section of the City Code (*i.e.*, noise, etc.) equipment such as metal shredders, fixed and mobile shears, material handlers, loaders, bulldozers, cranes, forklifts and nonferrous balers can be operated to facilitate a use that falls within the above-described parameters of the use category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)."
2. You ask whether "wrecking yard, motor vehicles and building materials" is the only use allowed in the use category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)." As discussed above, pursuant to the plain language of Table 9.2450, "wrecking yard, motor vehicles and building materials" is *included* in the use category, but the use category is not *limited to* "wrecking yard, motor vehicles and building materials."
3. You ask what uses are allowed within the use category Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage). A detailed answer to this question is set forth above. Any recycling use, as the term "recycling" is defined above, that falls within parameters of the above-defined terms is allowed within the category "Recycling – scrap and dismantling yard (includes vehicle wrecking and salvage)."

The Planning Director disagrees with a number of the unsupported factual assertions you make in your January 10, 2013, letter. However, because your unsupported factual assertions are irrelevant to this code interpretation, this interpretation does not address each assertion; lack of the Planning Director's explicit rejection of your unsupported facts is in no way acceptance of your assertions.

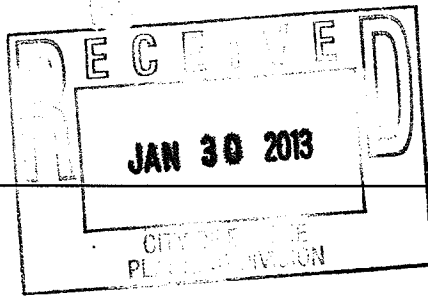
Appeal:

According to Eugene Code Section 9.0040, appeals of a Planning Director interpretation of the Land Use Code shall be heard by a Hearings Official in the manner set out in EC 9.7600-9.7635. The decision may be appealed within 12 days of the date the interpretation was mailed and shall be submitted on a form approved by the City Manager and accompanied by a fee.


Katharine Kappa, Land Use Supervisor
For Eugene Planning Director

Date 1/18/13

Cc: Kathryn Brotherton



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APPEAL OF PLANNING DIRECTOR'S DECISION

This appeal form applies to appeals of interpretation of this Land Use Code made according to EC 9.0040(1) and to appeals to all Type II land use applications. The appeal of the Planning Director's decision provides for a review of an administrative decision by a higher review authority specified in this Land Use Code. The Planning Director's decision may be affirmed, reversed, or modified.

Please check one of the following:

Adjustment Review <input type="checkbox"/> Minor <input type="checkbox"/> Major <input checked="" type="checkbox"/> Code Interpretation	Modification <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> Planned Unit Development. <input type="checkbox"/> Site Review <input type="checkbox"/> Willamette Greenways	<input type="checkbox"/> Standards Review
<input type="checkbox"/> Hazardous Materials Review	Partition <input type="checkbox"/> Tentative Plan <input type="checkbox"/> Final Plat	<input type="checkbox"/> Subdivision <input type="checkbox"/> Tentative Plan <input type="checkbox"/> Final Plat
Historic Property <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Moving	Planned Unit Development, <input type="checkbox"/> Final	<input type="checkbox"/> Traffic Impact Analysis
<input type="checkbox"/> Variance	<input type="checkbox"/> Site Review	Vacation <input type="checkbox"/> Improved Public R-O-W <input type="checkbox"/> Improved Public Easement <input type="checkbox"/> Unimproved Public R-O-W with Re-dedication

City File Name: DIRECTOR INTERPRETATION, SCHWITZER

City File Number: CI 13-1

Date of Planning Director Decision: JAN 18, 2013

Date Appeal Filed: JAN 30, 2013

(This date must be within 12 days of the date of the mailing of the Planning Director's decision.)

☒ Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the Planning Director's decision is inconsistent with applicable criteria. Please contact staff at the Permit and Information Center, 99 West 10th Avenue, (541) 682-5377, for further information on the appeal process.

☒ A filing fee must accompany an appeal of a Planning Director decision, with some exceptions for neighborhood groups. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a planning director decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

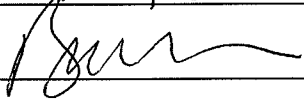
APPELLANT

Name (print): BILL KLOOS

Phone: 501 343 8596

Address: 375 W-4TH AVE #209

City/State/Zip: EUGENE, OR 97401

Signature: 

APPELLANT

Name (print): _____

Phone: _____

Address: _____

City/State/Zip: _____

Signature: _____

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: _____

LAW OFFICE OF BILL KLOOS PC

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January 30, 2013

Carolyn Burke, Planning Director
Eugene Planning and Development
99 West 10th Ave.
Eugene, OR 97401

Re: Appeal of Director Interpretation under EC 9.0040 relating to:
EC 9.0500; EC 9.2450; City File No. CI 13-1

Dear Ms. Burke:

Please accept this letter, the enclosed appeal form, and enclosed filing fee as an appeal of the Director's January 18 interpretation in this matter. This appeal is filed on behalf of Schnitzer Steel Industries Inc. ("SSI"). SSI seeks an interpretation of the uses allowed in the I-3 zone, as listed in the Table at EC 9.2450.

In this appeal we are requesting the Hearing Official, based on the record to be made at the public hearing, to determine that the applicant's proposed interpretation, as stated in our January 10 application letter, is the correct interpretation on the questions posed. The Director erred in failing to agree with each proposed interpretation in the attached January 10 letter.

At this juncture the applicant would make only one additional point in response to the Director's interpretation. The Director indicates that the sole issue in the interpretation is the question of "use," and not a question of the "specific equipment operated to facilitate the use." Decision at 2 last para. This reads the code too narrowly. There are a number of uses listed in the zone that relate to hardware or equipment, rather than strictly to use. There is not a bright line in the code that precludes examining equipment in connection with determining the scope of the listed use.

My client looks forward to the Hearing Official's interpretation, and it expects to file additional information in support of this appeal prior to the hearing.

Sincerely,



Bill Kloos

Cc: Client
Steve Pfeiffer



MILLER NASH LLP

ATTORNEYS AT LAW

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March 5, 2013

VIA E-MAIL
KATHARINE.K.KAPPA@
CI.EUGENE.OR.US

City of Eugene Hearings Official
c/o Katharine Kappa
Planning & Development
Planning Division
City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401

Subject: Schnitzer Steel Appeal of Request for Planning Director's Interpretation
(CI 12-2 & CI 13-1)

Dear Hearings Official:

We represent Pacific Recycling, Inc. ("Pacific"). Pacific's expansion of its metal recycling operation at 3300 Cross Street in the city of Eugene is the focus of the Planning Director's interpretations noted above. Please accept these written comments into the record of the March 13, 2013, proceedings in this matter.

DECISIONS ON APPEAL

The appeals arise from two requests for an interpretation filed by Schnitzer Steel Industries, Inc. ("Schnitzer") under Eugene Code ("EC") 9.0040. The first request (CI-12-2) was filed on December 11, 2012, and denied by the City on December 21, 2012. The Planning Director concluded that the request did not qualify as an "interpretation" within the meaning of the Code, but was rather an impermissible collateral attack on the City's previous zoning verification decision. The zoning verification decision concluded that Pacific's expansion of its metal recycling operation, which includes the installation of a metal shredder, was a permitted use in the City's I-3 Heavy Industrial Zone.



MILLER NASH^{LLP}

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City of Eugene Hearings Official

March 5, 2013

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Schnitzer's second request, filed on January 10, 2012, removed direct references to Pacific's operation, but requested an interpretation that a metal shredder is not allowed as a primary use in the zone. On January 18, 2013, the Planning Director denied this interpretation on the merits, concluding that the plain language of EC 9.2450, which permits "Recycling—scrap and dismantling yard (includes vehicle wrecking and salvage)," includes both vehicle wrecking and salvage and any other kind of recycling use. The Planning Director concluded that any use that falls within that category may use any type of equipment—including a metal shredder—that facilitates the use.

Schnitzer appealed both decisions, which were consolidated for the purposes of the March 13 hearing.

PACIFIC'S ARGUMENT

Pacific concurs with the analysis and conclusion of the Planning Director with regard to both decisions. We add the following arguments in support of these determinations.

CL 12-2: As noted previously, the City issued a zoning verification letter on December 7, 2012, concluding that Pacific's expansion was a permitted use in the I-3 Zone. On December 14, 2012, the City issued a land use compatibility statement reaching the same conclusion. Schnitzer appealed both of these determinations to the Land Use Board of Appeals ("LUBA"). The appeals were consolidated into a proceeding before LUBA (LUBA No. 2012-93 and No. 2012-96).

Schnitzer's first request is clearly a collateral attack on these decisions. Schnitzer was not requesting an interpretation, it was arguing that the City's prior determination, specifically with regard to Pacific's expansion, was wrong. Not only was this attempt properly rejected as being beyond the scope of the City's interpretation procedure, the City has no jurisdiction to revisit that decision: Once a decision has been appealed to LUBA, the City loses jurisdiction over that decision until the appeal is resolved. See *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005). (Absent statutory authority to the contrary, a local government has no jurisdiction to modify a land use decision that is before LUBA or the Court of Appeals.)

The Planning Director appropriately rejected Schnitzer's December 11, 2012, request for an interpretation.



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City of Eugene Hearings Official

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CL 13-1: The specific references to Pacific's operation were removed from Schnitzer's second request, and so a decision would have no direct effect on the City's prior decisions. But it is also clearly directed at Pacific's installation of a metal shredder to facilitate its expansion, and so teeters on the same edge. Regardless, the Planning Director's interpretation is correct on the merits and should be affirmed.

PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P.2d 1143 (1993) and State v. Gaines, 346 Or 160, 206 P.3d 1042 (2009) stand for the proposition that enactments are construed based upon the text and context of the enactment, legislative history, and (if the former does not resolve the interpretation) maxims of statutory construction. The Planning Director's interpretation relies on a plain reading of the permitted use as set forth in EC 9.2450. Pacific concurs with the Planning Director's analysis.

Pacific further notes that EC 9.0500 defines "use" as:

"[t]he purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained."

This definition supports the Planning Director's conclusion that it is the allowed activity on the site, not the infrastructure that supports that activity that constitutes the "use." Installation of a metal shredder will enable Pacific to more efficiently demolish vehicles and other scrap metal and separate out the components for recycling/resale. As the Planning Director noted, it is equipment that facilitates the designated use—recycling and vehicle wrecking and salvage; it is not a "use" itself within the meaning of the EC.

The Code context supports this reading. All of the uses listed in table 9.2450 are stated in terms of the allowed activity on the site. None of these uses are distinguished based upon the equipment used to facilitate the use.

Schnitzer argues that a metal shredder will create significant offsite impacts not contemplated by a recycling use involving scrap, dismantling, and vehicle wrecking and salvage, and that, therefore, it should be considered a separate use. There is no basis in the Code for drawing this distinction. Pacific notes that this type of recycling operation is only allowed in the I-3 Zone; it is not permitted as even a conditional use in the City's other industrial zones. The I-3 Zone is the City's heavy industrial zone; its express purpose is to accommodate high-impact uses. EC 9.2420 states:



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City of Eugene Hearings Official

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Page 4

"The purpose of the I-3 Heavy Industrial Zone is to implement the Metro Plan by providing areas to serve a range of manufacturing uses including those involved in the processing of large volumes of raw materials into refined products and/or industrial uses that have significant external impacts. In general, these areas are designated for heavy industry in the Metro Plan. Heavy industrial uses often have transportation needs that include both rail and truck. Less intensive industrial uses that are permitted in the Light-Medium Industrial Zone are also permitted."

The I-3 Zone is the most intense industrial zone under the City Code. The limitation of this type of recycling use to the I-3 Zone indicates that the City Council understood it to be a heavy industrial use with potentially significant impacts when it adopted this provision. The installation of a metal shredder as part of Pacific's expansion of its facilities will definitely allow Pacific to process a larger volume of materials more efficiently and thereby improve its ability to compete with companies such as Schnitzer. This is precisely the kind of use that the I-3 Zone is for.

Schnitzer's proffered interpretation that a piece of equipment that facilitates expansion of a permitted use is not allowed unless it is specifically referenced in the description of the use is not supported by the text or context of the Code.

CONCLUSION

The Planning Director correctly rejected Schnitzer's first request for an "interpretation" and correctly interpreted the Code in response to Schnitzer's second request. Pacific respectfully requests that the Hearings Officer uphold the Planning Director's decisions.

Very truly yours,

Jeffrey G. Condit, P.C.